THE HON'BLE SRI JUSTICE C.V. RAMULU

Monday, the 16th day of July,2007

W.P.No.25411 of 2000

Between:-

Kurella Issack … Petitioner

and

The Municipal Commissioner,
Gajuwaka Municipality,
Visakhapatnam District
and another … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.25411 of 2000

ORAL ORDER:

This Writ Petition is directed against an Award dated 4-10-2000 made in I.D.No.238 of 1998 on the file of Industrial Tribunal-cum-Labour Court, Visakhapatnam.

It appears, petitioner herein raised a dispute under Section 2-A(2) of the Industrial Disputes Act,1947 (for short 'the Act') seeking reinstatement with continuity of service, full back wages etc. It was his case that he was appointed as an N.M.R. in the Management/Municipality with effect from 1-5-1992 and worked as P.S. charge worker upto April,1993 continuously without any break and thus, completed 240 days of effective service in 12 calendar months. He was paid consolidated pay of Rs.550/- per month. He used to collect taxes from the tax-payers and also operate the electrical switches i.e. putting 'on and off' the street lamps. While so, in the month of May,1993, the Management discharged him from service without any notice. Respondent-Management did not follow the provisions of Section 25-F of the Act before his retrenchment. Therefore, the retrenchment is bad in law. The Management filed a counter, wherein it was asserted that the petitioner was appointed as a Petty Supervision Charge Worker with effect from 1-5-1992 on daily wage basis at Rs.17.25 per day and he was not entrusted with the work of collecting house taxes. There was no proceeding issued in this regard. Petitioner worked as P.S. charge worker from 1-5-1992 to 31-12-1992 on daily wage basis. No notice of termination was given

to the petitioner and in fact, it does not require. The Municipality has got more than 100 workers of NMRs, but not P.S. charge workers as their services were discontinued. Petitioner was not engaged, as there was no work. Hence, the petition is liable to be dismissed.

On behalf of the workman, he examined himself as W.W.1 and one K.Demudamma as W.W.2 and marked documents-Exs.W1 to W7. On behalf of the Management, one B.Apparao was examined as M.W.1 and marked the document-Ex.M1. After a detailed consideration of both oral and documentary evidence, though the Tribunal came to the conclusion that the petitioner has completed 240 days, but it was held that he is not an NMR worker and thus rejected his claim. The findings recorded at paragraph-8, which are relevant, read as under:

> "8. Therefore, the evidence of WW2 coupled with this admissions made by MW1 and Exs.W2 to W6 reveal that the workman in this case used to collect the taxes from tax payers by issuing the receipts. As already pointed out, the last receipt is dated 23.3.93 (Ex.W2) and it supports the case of the workman that he worked till Apri,1993 from 1.5.92. But the point, that the workman has to establish is that he worked as NMR worker, but not as P.S. charge worker on daily wages. There is no other material on record to show that the petitioner has worked as NMR worker. In the absence of any such material, the case of the petitioner is that he worked as NMR worker cannot be accepted and it is not true. Further, the certificate obtained by him, namely, Ex.W1 clearly goes to show that he worked as P.S. charge worker from 1.5.92 to 31.12.92. Therefore, under the circumstances, it cannot be said that the petitioner is a workman under the definition of Section 2(s) of the I.D.Act to be governed under Section 25-B(2) or Sec.25-F of the I.D. Act. Therefore, the workman is not entitled to any relief in this petition…."

I am of the opinion that the said finding of the Tribunal that simply because the petitioner was a P.S. charge worker, it cannot be said that he was a workman within the meaning of Section 2(s) of the Act, though he had worked continuously for more than 240 days continuously in a calendar year and, therefore, the provisions of

Section 25-F of the Act are not attracted is perverse. I am of the opinion that the Tribunal erred in recording such a finding. Once there is a finding that the petitioner-workman has put in 240 days continuous service, his termination amounts to retrenchment and following of provisions of Section 25-F of the Act is a mandatory and in this case, such a course was not adopted. Simply because the petitioner was paid from P.S. charges, it cannot be said that he is not a workman within the meaning of Section 2(s) of the Act. Whether the petitioner is an NMR or a P.S. charge worker, it makes no difference. He is a workman within the meaning of Section 2(s) of the Act. Therefore, the termination of the petitioner is contrary to the provisions of Section 25-F of the Act.

For all the above reasons, the impugned Award passed by the Tribunal is liable to be set aside to the extent that the petitioner is not a workman, and the provisions of Section 25-F of the Act are not applicable. Therefore, the impugned Award is modified to the following effect:

> "In the result, petitioner is entitled for reinstatement with continuity of service, but with 50% of back wages from the date of Award i.e. 4-10-2000 till the date of reinstatement. There is no order as to costs."

With the above modification, the Writ Petition is disposed of. No order as to costs.

16-7-2007

prk